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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/922,753

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Gregg Freishtat

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08/13/2008

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EXAMINER

GORT, ELAINE L

ART UNIT

PAPER NUMBER

3687

MAIL DATE

DELIVERY MODE

08/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/922,753	<b>Applicant(s)</b> FREISHTAT ET AL.	
	<b>Examiner</b> Elaine Gort	<b>Art Unit</b> 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/7/08; 1/7/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claim 69 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claim 69 recites a system comprising logic per se. If logic is merely computer code, then the method fails to comprise any physical elements and the claims are directed toward a computer program claimed as a computer listing per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. See MPEP 2106 IV.B.1(a).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 69 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 69 recites the limitation "the best sales associates" in line 10. There is insufficient antecedent basis for this limitation in the claim.

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It is unclear in claim 69 line 16 regarding "each best sales associate". It is unclear if this is relating to "each of the best sales associate" or to "each of another group of best sales associates".

It is unclear in claim 69 line 18 regarding "the sales associate". It is unclear which sales associate is being referred to. There is no prior recitation of a singular sales associate only associates.

Claim 69 recites the limitation "the matched sales associate" in line 23. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 recites the limitation "the matched sales associate" in line 26. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 recites the limitation "the particular sales opportunity" in line 27. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 69, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bunting et al. (US Patent 6,134,530) in view of Hung et al. (US Patent 6,760,429).**

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Bunting et al. discloses the claimed method for selling, as best understood, including gathering customer and product information, using this information along with sales associated information to find the best associates, provide the best associates an opportunity to assist the customer and if these associates do not assist the customer after a predetermined time, one of the best associates is selected and must assist the customer, where a connected associate is provided the customer and product information to assist the call;

but is vague regarding how the customer and session information, including product information, is entered into the system when the customer is interfacing the system via a web page, Bunting et al. discloses clearly that this information is collected via the VRU and forwarded to the sales associates. Hung et al. teaches that it is known in the art of web based agent backed systems to gather website session information, including product information, and customer information and forwarding this information to a sales associate to provide information to the associate that would be useful in servicing the customer (for example see column 6, lines 19+). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Bunting et al. with the gather website session information, including product information, and customer information and forwarding this information to a sales associate as taught by Hung et al., in order to provide information to the associate that would be useful in servicing the customer.

***Response to Arguments***

7. Applicant's arguments with respect to claim 69 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Monday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/  
Primary Examiner, Art Unit 3687

August 12, 2008